

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4707 of 1999

to

FIRST APPEAL No 4739 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

JOITARAM HARIDAS PATEL

Appearance:

Mr.J.M. Pancholi, AGP for appellants

MR PK JANI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE D.P.BUCH

Date of decision: 01/08/2000

COMMON JUDGEMENT (PER : M.H.KADRI, J)

1. Appellants, in this group of appeals, which are filed under Section 54 of the Land Acquisition Act, 1894 (to be referred to as the "Act" for short) read with Sec.96 of the Code of Civil Procedure, have challenged common judgment and award dated August 12, 1998, passed by the learned Assistant Judge, Mehsana, in Land Reference Case Nos. 2239 of 1991 to 2271 of 1991. As common questions of facts and law are involved in these

First Appeals, we propose to dispose of them by this common judgment.

2. Agricultural lands of the respondents situated at village Unjha were placed under acquisition for public purpose of Sipu Project by issuance of notification under Section 4(1) of the Act published in the Government Gazette on August 17, 1989. After following usual procedure under the Act, declaration under Section 6 of the Act which was published in the official gazette on August 16, 1990. The respondents, who were owners of acquired lands, were served with notices under Section 9(3)(4) of the Act. The respondents appeared before the Land Acquisition Officer and claimed compensation of acquired lands at the rate of Rs.100/- per sq. met. The Land Acquisition Officer, on the basis of materials placed before him, made his award on June 25, 1991, and offered compensation of acquired lands at the rate of Rs.2.50 per sq.mtr. The respondents were of the opinion that compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the District Court, Mehsana, for determination of adequate compensation. Accordingly, references were made to the District Court, Mehsana, which were numbered as Land Reference Cases Nos. 2239 of 1991 to 2271 of 1991.

3. Before the Reference Court the respondents claimed compensation at the rate of Rs.200/- per sq.mtr. In the applications, it was pleaded by the respondents that because of acquisition of their lands, they had suffered considerable damages; that acquired lands were having high fertility and potential value; that, village Unjha was having facilities of railway, national highway, cooperative societies, transport companies, branches of several nationalised banks and there was biggest market yard situated within parameters of village Unjha. It was pleaded that looking to the facilities available in the village, and fertility of lands, the claimants ought to have been awarded higher compensation.

4. The reference applications were contested by the appellants by filing their reply at Exh.4, inter alia, contending that the Land Acquisition Officer, while making his award, had offered just and adequate compensation for acquired lands to the respondents. The Land Acquisition Officer had taken into consideration prevalent market price of acquired lands at the relevant date and had fixed market price of acquired lands. The appellants denied that, on account of acquisition, rest

of agricultural lands have become uncultivable. It was further pleaded that compensation claimed by the claimants was excessive and therefore the applications be dismissed with costs.

5. On rival assertions of the parties, the Reference Court framed issues at Exh.5 in Land Reference Case No.2244 of 1991, which was treated as main case, wherein common evidence was led by the parties. To substantiate their claim, the respondents examined Becharbhai Haribhai Patel, who was claimant of Land Acquisition Reference No.2244 of 1991, was examined at Exh.7. The said witness deposed that all acquired lands were having similar situation, fertility and were situated in the outskirts of village Unjha. He deposed that all the claimants were solely dependent on acquired lands as lands were the only source of livelihood. He further deposed that, because of acquisition, rest of agricultural lands had become fragments and they have become useless for cultivation. He deposed that acquired lands were highly fertile and the claimants were raising three crops in a year of bajri, juwar, mug, wheat, jeera, variad, isaqbal, vegetable, etc. The lands were having facility of irrigation through tube-wells, and the wells situated on the acquired lands. With regard to description of acquired lands, the witness deposed that lands were situated on Unjha-Kheralu road, and were situated near gamtel of village Unjha. He further claimed that village Unjha was having population of one lakh and there was big market yard wherein variadi, isaqbul and jeera were sold. He claimed that market yard of Unjha was the biggest in Asia and agricultural produces of jeera and isaqbul were exported throughout the world. He also deposed that Unjha was connected by rail and the railway station of Unjha was situated on the main line of Ahmedabad-Delhi route. He stated that agriculturists were getting net income of Rs.10,000/- per bigha out of sale of agricultural produces which were raised on acquired lands.

6. The Reference Court, for the purpose of determination of market value of present acquired lands of town Unjha, had relied upon previous award Exh.14 rendered in Land Reference Case Nos. 91 of 1991 to 104 of 1991, wherein, market value of agricultural lands of same town Unjha was determined at the rate of Rs.40/- per sq.mtr as on January 18, 1989. Notification under Section 4(1) of the Act in respect of present acquired lands was issued on August 17, 1989. This indicates that notification of present acquired lands and notification of the lands, which were subject matter of previous award

Exh.14, were issued in near proximity of time. The evidence adduced by the claimants before the Reference Court had established that acquired lands previous award Exh.14 of same town Unjha were in all respects comparable and relevant and having same fertility as compared with present acquired lands. The Reference Court, by placing reliance on previous award Exh.14, had determined market value of present acquired lands at the rate of Rs.40/per sq.mtr, which has given rise to filing of the present appeals by the appellants.

7. We have heard learned counsel for the parties at length. We have also taken into consideration relevant documents as well as oral evidence produced on record before the Reference Court.

8. Mr. V.M. Pancholi, learned Assistant Government Pleader appearing for the appellant, has vehemently submitted that previous award Exh.14 was not relevant and comparable for the purpose of determination of market value of present acquired lands. Learned counsel for the appellant further submitted that present acquired lands and acquired lands of award Exh.14 were not situated in the same locality and, therefore, the Reference Court had erred in awarding compensation of present acquired lands at the rate of Rs.40/- per sq.mtr. Learned counsel for the appellant further submitted that determination of market value of present acquired lands by the Reference Court was based on no evidence and, therefore, the appeals deserve to be allowed.

9. Having gone through the record and proceedings of the case and having considered the situation and fertility of present acquired lands, as compared with acquired lands of previous award Exh.14 of the same town Unjha, we are of the opinion that the submissions made by learned Assistant Government Pleader, Mr. Pancholi, do not deserve any merit. The claimants had led sufficient evidence to prove that present acquired lands were having high fertility and the agriculturists were raising three crops in a year, and town Unjha was having population of more than 1 lakh and was having huge market yard. Due to acquisition of lands for various public purposes, there was heavy pressure on agricultural lands of village Unjha and the price of the land was increasing day by day, which becomes evidently clear from previous awards produced by the claimants at Exh.11 to Exh.15. The High Court, in First Appeals Nos. 4702 of 1997 to 4715 of 1997, had confirmed determination of market value of acquired lands of town Unjha at the rate of Rs.40/- per sq.mtr as on January 18, 1989. The present acquired lands were placed under acquisition by notification issued under Section 4(1) of the Act on August 17, 1989, i.e. after seven months of notification which was

subject matter of acquired lands of First Appeal No.4702 of 1997 and allied matters. Taking into consideration the fact that determination of market value of acquired lands of town Unjha at the rate of Rs.40/-per sq.mtr, was confirmed by the High Court in its judgment and order rendered in First Appeal No.4702 of 1997 and allied matters, in our opinion, determination of market value of present acquired lands of town Unjha by the Reference Court as on August 17, 1989, at the rate of Rs.40/- per sq.mtr, cannot be said to be on higher side. In our opinion, a just, adequate and reasonable compensation was awarded to the claimants for their fertile lands which were under acquisition. The ultimate decision of the Reference Court that the market value of the lands acquired in the present case should be assessed at the rate of Rs.40/- per sq.mtr as on August 17, 1989 cannot be said to be erroneous at all. The Reference Court has correctly appreciated the evidence of the case and applied principles which have been enunciated by the Supreme Court from time to time to the facts of the case. Under the circumstances, we are of the opinion that no ground is made out by learned counsel for the appellants to interfere with the impugned award in these appeals. The benefits extended to the respondents under statutory provisions of Sections 23(1-A), 23(2) and interest under Section 28 are also just and proper and do not call for any interference in these appeals. However, the claimants would not be entitled to solatium on the 12% increase awarded under Section 23(1-A) of the Act and no interest shall be payable on the amount of solatium as per the decision of the Supreme Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar, reported in Judgment Today 1995 (2) S.C. 583.

For the foregoing reasons, all the appeals fail and are dismissed with no order as to costs.

(M.H.Kadri, J.)

(D.P. Buch, J.)

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